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REPORT OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS ON ITS NINTH SESSION

held at the Palais des Nations, Geneva
from 2 to 6 December 1996

The attached report (JIGE(IX)/4)* has been prepared on the ninth session of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects.

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Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects

Ninth session

Geneva, 2 to 6 December 1996

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INTRODUCTION

1. The Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, established by the International Maritime Organization (IMO) and the United Nations Conference on Trade and Development (UNCTAD), held its ninth session at the Palais des Nations, Geneva, from 2 to 6 December 1996.

2. During the session, two plenary meetings and eight informal meetings of the sessional group of the whole were held.

Opening statement

3. The Deputy Secretary-General of UNCTAD, speaking also on behalf of the Secretary-General of IMO, said that the objective of the Group's work was to produce a legal framework which would protect the interests of owners of cargo and ships by securing the free movement of vessels and by prohibiting arrest for unjustifiable claims and claims not related to the operation of vessels. An appropriate legal framework widely accepted by the international community would contribute to greater international uniformity of rules applicable to the enforcement of maritime claims. He congratulated the Joint Group for the progress achieved during the two sessions devoted to the review of the 1952 Convention on Arrest of Ships; he was particularly pleased that the work had been carried out in an atmosphere of excellent cooperation between the two United Nations agencies and the private sector, particularly the International Maritime Committee (CMI), which had provided very valuable assistance to the Group.

4. Pursuant to the outcome of UNCTAD IX, UNCTAD had been given a new, revitalized role. Its mandates had been streamlined and focused on key issues directly related to trade and development. Both the intergovernmental machinery and the secretariat had gone through a process of restructuring and reorientation and prioritization of their work to enable them to respond better to the new challenges. As a result of these structural changes, this would be the last session of the Group to be held in UNCTAD. However, UNCTAD would, in principle, continue to cooperate with IMO until the work of the Joint Group had been completed.

Chapter I

CONSIDERATION OF THE REVIEW OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE ARREST OF SEA-GOING SHIPS, 1952

(Agenda item 3)

5. For its consideration of this item, the Joint Intergovernmental Group of Experts (JIGE) had before it the following documentation:

> "Consideration of the Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 - note by the secretariats of UNCTAD and IMO" (JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39);
>
> "Compilation of comments and proposals by Governments on the draft articles for a convention on arrest of ships - note by the secretariat of UNCTAD" (JIGE(IX)/3-TD/B/IGE.1/3-LEG/MLM/40).

6. At its opening plenary, the Joint Intergovernmental Group decided to pursue its consideration of this item within the framework of an informal sessional group of the whole.

Informal sessional group of the whole

7. In the course of eight informal meetings, the sessional group of the whole considered the draft articles for a convention on arrest of ships as contained in document JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39. It requested the informal working group established at its eighth session to continue consideration of draft article 1 (1) on definitions.

Action by the Joint Intergovernmental Group of Experts

8. At its 2nd (closing) plenary meeting, on 6 December 1996, the Joint Intergovernmental Group of Experts adopted the report of the sessional group of the whole (TD/B/IGE.1/L.2), as orally amended at the closing meeting of the sessional group, as well as the paper of the informal working group on Article 1 (1) (TD/B/IGE.1/L.2/Add.1). (For the report of the sessional group and the paper of the informal working group, see annexes II and III respectively.)

9. The Intergovernmental Group of Experts also decided that a document containing revised draft articles for a convention on arrest of sea-going ships would be prepared by the secretariats of UNCTAD and IMO, in consultation with the Chairman of the Intergovernmental Group, on the basis of the decisions of the Group. The document would serve as the basis for the work of a possible diplomatic conference convened by the General Assembly of the United Nations. (For the revised draft articles, see document JIGE(IX)/5-TD/B/IGE.1/5-LEG/MLM/42.)

10. Finally, the Intergovernmental Group of Experts adopted a draft recommendation on the convening of a diplomatic conference (TD/B/IGE.1/L.3), as orally amended (for the text of the recommendation, see annex I).

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

11. The ninth session of the Joint Intergovernmental Group of Experts was opened on 2 December 1996 by Mr. C. Fortin, Deputy Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

12. At its opening plenary meeting, on 2 December 1996, the Joint Intergovernmental Group of Experts elected Mr. K.-J. Gombrii (Norway) as its Chairman and Ms. I.I. Barinova (Russian Federation) as a Vice-Chairman. The officers for the ninth session were therefore as follows:

Chairman:	Mr. K.-J. Gombrii	(Norway)
Vice-Chairmen:	Mr. I. Melo Ruiz	(Mexico)
	Ms. I.I. Barinova	(Russian Federation)
Vice-Chairman-cum-Rapporteur:	Mr. Zengjie Zhu	(China)

C. Adoption of the agenda and organization of work

(Agenda item 2)

13. At its opening plenary meeting, on 2 December 1996, the Joint Intergovernmental Group of Experts adopted its provisional agenda, as contained in document JIGE(IX)/1-TD/B/IGE.1/1-LEG/MLM/38. The agenda for its ninth session was thus as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Consideration of the review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

4. Provisional agenda and date of the next session

5. Other business

6. Adoption of the report of the ninth session

14. Also at its opening plenary, the Joint Intergovernmental Group decided to establish an informal sessional group of the whole to consider agenda item 3.

D. Provisional agenda and date of the next session

(Agenda item 4)

15. The Joint Intergovernmental Group of Experts considered that it had completed its work on the topic before it and that the question of a future session should be decided on by its parent bodies.

E. Adoption of the report of the ninth session

(Agenda item 6)

16. At its closing plenary meeting, on 6 December 1996, the Joint Intergovernmental Group of Experts adopted its draft report (TD/B/IGE.1/L.1) and authorized the Rapporteur to complete the text in the light of the proceedings of the closing plenary.

Annex I

RECOMMENDATION ADOPTED BY THE JOINT INTERGOVERNMENTAL GROUP OF EXPERTS AT ITS NINTH SESSION

The Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects recommends to the International Maritime Organization (IMO) Council and to the Trade and Development Board of UNCTAD that they consider favourably, on the basis of the useful work done so far, proposing to the General Assembly of the United Nations the convening of a diplomatic conference to consider and adopt a convention on certain rules relating to the arrest of sea-going ships on the basis of the draft articles prepared by the Group of Experts.

Annex II

REPORT ON THE WORK OF THE SESSIONAL GROUP OF THE WHOLE OF THE JOINT UNCTAD/IMO INTERGOVERNMENTAL GROUP OF EXPERTS ON MARITIME LIENS AND MORTGAGES AND RELATED SUBJECTS AT ITS NINTH SESSION

Item 3: Consideration of the Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

1. The Sessional Group of the Whole continued consideration of the draft articles for a Convention on Arrest of Ships, as contained in document JIGE(IX)/2-TD/B/IGE.1/2-LEG/MLM/39.

Article 1 - Definitions

Paragraph (1)

2. The Sessional Group discussed the question as to whether Article 1 (1) should adopt a similar approach to that of the 1952 Convention and provide an exhaustive list of maritime claims, or whether it should adopt a more flexible approach by retaining a non-exhaustive list. Opinions were divided on the subject; while many delegations preferred flexibility and a non-exhaustive list, others favoured having a closed list of maritime claims. One delegation proposed adopting a closed list provided that each maritime claim was described in general terms and that Article 3 (1) permitted arrest irrespective of whether the claim was secured by a maritime lien and whether the shipowner was personally liable for the claim.

3. The Sessional Group agreed that the question was decisive and could not be agreed at this stage. It was, therefore, decided to place the relevant words in the chapeau of Article 1 (1) in brackets and leave the matter to be decided at a later stage, possibly by a diplomatic conference.

4. The Chairman of the Informal Working Group on Article 1 (1), reporting on the work of the Informal Group, said that the paper submitted to the Sessional Group (see annex III below) was the result of discussions by 12 delegations. It identified which changes had been agreed in London and Geneva respectively. In addition, a number of endnotes were attached to the paper in order to provide a more accurate account of the different views expressed by delegations.

5. With respect to the relationship between "maritime claims" and "maritime liens", the observer for the International Maritime Committee (CMI) noted that, in ensuring that maritime liens recognized by the 1993 International Convention on Maritime Liens and Mortgages (MLM Convention) were covered by the definition of "maritime claim", there was no need strictly to use the same wording, since "maritime liens" were by nature more restrictive than "maritime claims".

6. One delegation referred to the task of the Working Group of ensuring that the list of maritime claims in Article 1 should include all claims with maritime lien status under the 1993 MLM Convention but should not necessarily be restricted to claims with maritime lien status.

7. One delegation said that there was overlap between subparagraphs (a) and (h) and that subparagraph (h) should therefore be deleted. The same would apply to the last sentence of subparagraph (d) that referred to "or losses incurred, or likely to be incurred, by third parties", since subparagraph (a) referred to "loss" as well.

8. One delegation questioned the changes in subparagraph (m), where the word "construction" was replaced by "building" and expressed concern as to the suggestion to include the word "physical" in subparagraph (a), as suggested in the endnotes by two other delegations, since such inclusion would prevent "economic losses" from being covered by subparagraph (a).

9. Another delegation requested some clarification as to the reasons for including "shippers" in subparagraph (p). It was hard to imagine a concrete situation in which shippers made disbursements on behalf of the ship. The delegation proposed the deletion of the word "shipper" and reversion to the JIGE draft if the change was not intentional.

10. Another delegation suggested that to refer only to "port dues and charges" in subparagraph (n) might be interpreted in a restrictive manner, since it might not include all the charges originating in the port, such as mooring and wharfage charges. It asked for subparagraph (n) to be redrafted to ensure that all port fees and charges were included.

11. One delegation noted that subparagraphs (a) and (h) were kept because the second part of subparagraph (a) was deleted. The suggestion to retain the word "physical" in subparagraph (a) was made so that consequential losses would not be included. This delegation suggested that the word "direct" in subparagraph (b) should be kept in brackets, since the Group was divided as to whether it should be retained or deleted. The word "shipper" in subparagraph (p) was introduced following the 1952 text of the Convention. One delegation pointed out that the specific issue of inserting the word "shipper" had not been discussed in the Working Group. Concerning subparagraph (d), this delegation felt that, in keeping with the compromise in relation to the MLM Convention, a vessel should not be arrested for claims which arose out of the damage in connection with the carriage of oil or other hazardous or noxious substances for which compensation was payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance. Concerning subparagraph (e), this delegation felt that ships in distress should not be arrested due to the inherent risks involved.

12. Another delegation stressed that the word "charges" in subparagraph (n) was satisfactory as drafted and would cover all charges incurred by a ship in a port.

13. One delegation noted that the merging of subparagraphs (s) and (v) mi present some drafting problems since Article 4 (1) made some cross-referenc to Article 1 (1). It would be better to keep subparagraphs (s) and (v) as originally drafted.

14. One delegation expressed serious concern about retaining the brackets the umbrella text of Article 1 (1), since a majority of the Group had expressed on various occasions a preference for an open list. To keep the brackets and the list might be misleading as to the real preferences expres by the Group. However, the Group decided to adhere to its previous decisio to identify the problem through the use of brackets.

15. It was agreed that the comments made by delegations would be reflecte in the report of the Group and the paper of the Informal Working Group woul be attached to the report. It was further agreed that the secretariat woul produce a clean text of all of the draft articles, including Article 1 (1), consultation with the Chairman and reflecting the discussions of the Sessio Group.

Paragraph (2)

16. The Group noted that, at its last session, it had decided to revert to the definition of arrest contained in Article 1, paragraph 2, of the 1952 Convention. Most delegations supported in principle the proposal made b Japan (document JIGE(IX)/3, paras. 2 and 3) to specifically exclude in arres procedures consideration of any document which could be enforced in a way similar to a judgement. In the opinion of several of these delegations, the expression "other documents" contained in this proposal was too imprecise, a adequate wording would have to be found. The Group also considered the proposal by the United Kingdom (JIGE(IX)3, paras. 7-9) that the definition o "arrest" should be modelled more closely on that of the 1952 Convention and, in particular, the words "when at the time of such detention or restriction the ship is physically within the jurisdiction of the State where the order has been made" in the first sentence should be deleted.

17. It was suggested that, if the definition included in Article 1 (2) of the 1952 Convention with the inclusion of the proposal made by Japan was goi to be retained, the second part of this definition, as contained in Article 1 paragraph 2, which had been prepared by the JIGE, could be retained.

18. A suggestion that the definition of arrest should include not only reference to physical measures but also the regulation of legal effects was not supported on the grounds that legal effects would be very difficult to enforce worldwide on account of the operation of national law.

19. Following consultations with several delegations, the Chairman made a proposal for a new text for this paragraph contained in document TD/B/IGE.1/CRP.3. Bearing in mind several amendments made in connection with this proposal, the Group adopted the following text:

"Arrest" means any detention or restriction on removal of a ship as a conservatory measure by order of a Court to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgement, arbitral award or other enforceable instrument.

20. Views were expressed on the possible inclusion of reference to the physical presence of the ship within the jurisdiction of the State where the arrest was made. This issue was settled, however, in Article 8 (1).

21. The Group noted that, in view of its paramount importance, this definition might require further consideration.

22. A discussion was also held on whether reference should be made to the legal constraints which might be the result of an arrest, such as a ban on mortgaging or selling the ship under arrest. The Group did not agree to the inclusion of any text in this regard, since it was felt that the effects of an arrest ought not to be regulated in any definition of the Convention but left to national law.

Paragraph (3)

23. The Group accepted the proposal made by the United Kingdom in document JIGE(IX)/3, paragraphs 10 and 11, to replace the definition of "person" by the one contained in the 1969 Civil Liability Convention and the 1996 Hazardous and Noxious Substances (HNS) Convention.

Paragraph (4)

24. One delegation was of the opinion that arrest should be permitted only if there was a risk that the alleged claim might not be satisfied. This was not accepted by the Sessional Group. It was pointed out in that context that definitions should not be unnecessarily burdened with substantive requirements, which should be dealt with in other articles of the Convention.

Paragraph (5)

25. No comments were made in respect of this paragraph. The Sessional Group accepted the text of this subparagraph as presently drafted.

26. Some delegations suggested that the text in Spanish of this article be rephrased so as to reflect the meaning of this provision in a positive rather than a negative way, as in the English text.

Article 2 - Powers of arrest

Paragraph (1)

27. There was wide support for the proposal made by the United Kingdom in document JIGE(IX)/3, paragraph 12, to delete reference to arrest "demanded" and replace the expression "effected" by "made". Some delegations also proposed the inclusion of the reference to "Contracting State" as in Article 4 of the 1952 Convention. A proposal to include a reference to the fact that

the vessel should be within the jurisdiction of a contracting State did not find support on the grounds that several delegations considered this circumstance to be self-evident.

28. The Group discussed whether a decision by a court was necessary in all cases to release a ship from arrest. Some delegations were of the opinion that agreement between the claimant and the defendant duly communicated to port authorities could be accepted as providing sufficient title for a release without the intervention of the court which had authorized the arrest. Such a procedure could be helpful in cases where the parties had reached an agreement during public holidays when courts were not operating.

29. Most delegations opposed this view. In their opinion the intervention of a court for the release of a ship was required on grounds of the need for legal certainty and as a basis for the protection of eventual interests of third parties. Reference was also made to cases where court authorities were in fact available at all times during public holidays in order to ensure prompt release of a vessel.

30. The Sessional Group accepted the proposal made by the United Kingdom concerning the inclusion of the reference to "Contracting State", as in Article 4 of the 1952 Convention.

Paragraph (2)

31. The Sessional Group decided to insert the word "only" after "A ship may", so that the paragraph would read "A ship may only be arrested in respect of ...".

Paragraph (3)

32. The Sessional Group considered the proposal of the observer for the International Chamber of Shipping (ICS) to delete the words "or is sailing" from this paragraph.

33. Some delegations suggested that the arrest of a ship already sailing would be difficult to implement and could also pose safety problems. In response, other delegations mentioned cases where the return of a ship already sailing could be secured, especially in the case of ships which were still within large port areas.

34. A discussion was held on the implications, if any, of this paragraph, bearing in mind provisions of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention). In this regard, reference was made to Article 28, paragraph 3, of this Convention, which recognized the right of the coastal State, in accordance with its law, to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters.

35. In this context a reference was made to the right of hot pursuit by the coastal State. It was noted that Article 111 of the LOS Convention allowed the exercise of this right when the coastal State had good reason to believe

that a foreign ship had violated the laws and regulations of that State. It was submitted that this matter of public law did not relate to the scope of implementation of a prospective arrest convention.

36. Bearing in mind the reasons for the inclusion of the possibility to arrest a ship even if it was already sailing, consideration was given to the effect of the possible suppression of the words "or is sailing" from the draft. In the opinion of some delegations, the coastal State would in any case retain the possibility of arresting a ship which was leaving or had left port as long as it was within its jurisdiction. It was suggested that clear terms be included in the convention indicating that arrest could be effected only in respect of ships within the jurisdiction of the coastal State. While some delegations preferred to keep the text of Article 2 (3) as presently drafted, other delegations favoured either deleting or placing the paragraph in brackets.

37. In the view of other delegations, deletion could be interpreted as imposing a limitation on the power of the State to arrest a foreign ship. Such a restriction could in fact result in the impossibility of making arrests in many cases where the claim had not been properly substantiated due to lack of time but was nevertheless legitimate. Reference was also made to the difference between the physical intervention and the legal effects of an arrest, which in many cases was the source of confusion regarding the extent to which a State could enforce jurisdiction in this regard.

38. The Group decided that the text of this paragraph should be placed within brackets.

Paragraph (4)

39. The Group accepted a drafting proposal from the United Kingdom, contained in paragraphs 13 to 15 of document JIGE(IX)/3, designed to clarify the contents of the text. The Group was unable to accept a proposal to delete the words "for the purpose of obtaining security", which were considered superfluous by some delegations, since this was already part of the definition.

Paragraph (5)

40. The Sessional Group discussed the proposal submitted by the United Kingdom (JIGE(IX)/3, para. 16) to refer only to the law of the State in which the arrest was made, thus deleting reference to the law of the State where the arrest was demanded.

41. Some delegations noted that, while a similar proposal had been adopted by the Group in paragraph 1, a distinction should be made in relation to paragraph 5, which covered a different situation. Reference to an application for arrest was in this case important, since it was related to the procedural aspects of the *lex fori*, and cases where arrest was applied for and not granted must also be borne in mind.

42. The Group considered that the language used in the 1952 Convention should be preferred. Accordingly, the Group agreed to replace the words "is demanded or has been effected" by "was made or applied for".

43. One delegation proposed including in the text of this paragraph a requirement according to which, before an arrest was made, notice of the claim should be given to the shipowner or the master of the ship concerned. The proposal contained the proviso that this notice should not be a condition to enable arrest. The delegation explained that this should be considered as the sole procedural requirement to be included in the Convention. It would then be left to national law to decide who should comply with it and whether sanctions for non-compliance should be applied, as well as what the consequences would be of such non-compliance. The inclusion of this proposal in the arrest convention was regarded as preventing the remedy of arrest being used to blackmail shipowners into payment of claims.

44. Most delegations opposed this proposal on the grounds that procedural matters should be considered entirely within the scope of national law. It was also noted that, since the proposal was not a precondition upon which the granting of arrest would depend, it would not achieve its main purpose, namely avoiding a situation where a ship was prevented from sailing by the authorities of the State in which arrest was applied for.

45. The Group was unable to adopt the proposal.

46. The Sessional Group considered a proposal made by France (contained in document TD/B/IGE.1/CRP.2) that Contracting States undertake to include in their domestic legislation rules limiting the financial implications for ports of the arrest of ships. This proposal was in line with several interventions of the International Association of Ports and Harbours (IAPH) on the need to address the implications of arrest of ships for ports.

47. There was general acknowledgment that there was a need to regulate the question of financial implications for ports arising from arrest of ships. While some delegations indicated their readiness to support this proposal, other delegations conditioned their support on the amendment of the proposal to the effect that the enactment of legislation by contracting States would be optional rather than compulsory. One delegation suggested that, as an alternative, a requirement could be introduced in Article 6 that the claimant offer financial security to cover port expenses.

48. Most delegations, however, were of the opinion that, notwithstanding the need for appropriate national legislation, the opportunity and circumstances for the accomplishment of this task should be left entirely to the decision of States. Accordingly, no provision in this regard should be included in a prospective arrest convention.

49. The Group was unable to adopt the proposal made by France.

Article 3 - Exercise of right of arrest

50. The Sessional Group considered the three alternative texts for Article 3, paragraph 1, relating to the exercise of the right of arrest. It also discussed the following new compromise proposal put forward by the delegation of the United States of America (TD/B/IGE.1/CRP.2):

"(1) Arrest is permissible of any ship in respect of which a maritime claim is asserted if:

(a) the claim is secured by a maritime lien and is within the following categories: (i) - (v) [as in alternative 1, JIGE(IX)/2]; or

(b) the claim is secured by a maritime lien, other than those referred to in subparagraph (a), recognized under the law of the State where the arrest is requested; or

(c) the claim is based on a registered mortgage or 'hypothèque' or a charge of the same nature; or

(d) [as (c) in alternative 3 in JIGE(IX)/2, page 13]; or

(e) [as (d) in alternative 3 in JIGE(IX)/2, page 13];

Article 3, paragraphs 2 and 3 would remain unchanged (JIGE(IX)/2, pp. 13-14)".

51. The delegation of the United States of America explained that the proposal was based on the present text of alternative 3 and the proposal submitted by it during the eighth session of the Joint Group. Although it continued to favour the text of alternative 2, it recognized that alternative 2 gave rise to serious concerns on the part of several delegations. The present proposal was therefore made to facilitate reaching a compromise solution. The proposal introduced the following changes to alternative 3: (a) the word "granted" was changed to "recognized" so as to allow the national court concerned to authorize an arrest of a vessel if, on the basis of a choice of law analysis, the court recognized the claim being asserted even if its national law did not grant such a lien; (b) the reference to the 1993 MLM Convention was deleted so that the present draft revision of the Arrest Convention could stand alone without direct linkage to that Convention; (c) it incorporated a number of drafting amendments proposed by some delegations after the eighth session of the Joint Group. In Article 3 (1) (b), the words "other than those referred to in subparagraph (a)", were included. In summary, the proposal clearly set out maritime liens recognized under Article 4 of the MLM Convention and provided a means of enforcing maritime liens other than those recognized in Article 4 of the Convention, but no State was required to enforce maritime liens arising under Article 3 (1) (b). The matter was left to the national law of the court considering the case.

52. Most delegations considered that, although the proposal of the United States of America had some drawbacks, it provided a good basis for a compromise.

53. Some delegations which had favoured alternative 3 or alternative 1 were prepared to accept the proposal subject to certain amendments, as it was understood that the proposal was in line with the compromise adopted under Article 6 of the 1993 MLM Convention. It was pointed out that, while it was

essential to keep the two Conventions separate, it was also important to ensure conformity between them. It was questioned whether the omission of any reference in paragraph (b) to the words in the chapeau of Article 6 of the MLM Convention was intentional. In the view of some delegations, under Article 6, only claims against "the owners, demise charterer, manager or operator of the vessel" could be secured by a national maritime lien. According to that view, the deletion of any express reference to that article without incorporating the substance of its chapeau would clearly widen the scope of this Convention by also including claims against time and voyage charterers as a basis for arrest. The delegation of the United States of America confirmed that it preferred to keep the present wording of the proposal and to include claims against time and voyage charterers.

54. One delegation proposed including in paragraph (b) the words "claims against the owner, demise charterer, manager or operator of the vessel" in order to ensure that paragraph (b) would be in line with the compromise regarding Article 6 of the MLM Convention. This delegation added that this would be a requirement for the approval of the proposal of the United States of America. It was further suggested that the same words, which were also included in the chapeau of Article 4 of the MLM Convention, should be added in subparagraph (a) of the proposal. These proposals were supported by most delegations.

55. Some delegations questioned the use of the word "registered" in subparagraph (b). Others proposed using the term "registered" also in reference to "hypothèque" and charges of the same nature. One delegation suggested using in subparagraph (c) the words "a mortgage or an 'hypothèque' or a registrable charge of the same nature" from Article 1 (1). Another delegation proposed using in paragraph 1 (a) (v) the same wording as in Article 4 (1) (e) of the MLM Convention.

56. Some delegations preferred using the word "granted" rather than "recognized" in subparagraph (b). It was pointed out that the proposal could otherwise lead to increased forum shopping and would not promote harmonization of law.

57. Some delegations questioned the necessity for retaining subparagraphs 1 (d) (ii) and 2 (b) of Article 3. These delegations preferred the approach of the 1952 Convention and proposed preventing arrest for claims not secured by maritime liens for which demise charterers and time charterers were personally liable. These delegations therefore proposed deleting these subparagraphs.

58. One delegation stated that the object of the Arrest Convention was to secure free movement of the vessel and to serve international seaborne trade. As a result, it would protect the interests not only of shipowners but also of all those involved in international trade, including cargo owners, charterers, port authorities, banks, etc. It was consequently in the interest of the whole industry to restrict arrest to cases of absolute necessity. In the view of this delegation, arrest should only be allowed when the owner was liable for the claim. In cases where the owner was not personally liable for the

claim, arrest should be permitted in exceptional cases, for example where the claim was secured by an internationally recognized maritime lien. This delegation expressed its preference for alternative 1 and at the same time supported deletion of subparagraphs 1 (d) (ii) and 2 (b) of this article.

59. One delegation questioned the need for paragraph 3 of this article. It was explained that this paragraph formed part of the compromise reached at Lisbon to prohibit arrest for claims which could not be enforced against the ship.

60. The Sessional Group also considered a proposal by the delegation of the United Kingdom (contained in document JIGE(IX)/3). This delegation preferred not to link expressly the two Conventions, especially if the list of maritime claims in Article 1 (1) was to be exhaustive. Any link, if thought necessary, should be limited to referring only to maritime liens recognized by the law of the State in which the arrest was made. It was therefore proposed to amend paragraphs (a) and (b) as follows:

> "(a) the claim is secured by a maritime lien recognized under the law of the State where the arrest is made;
>
> (b) the claim is based upon a mortgage, an 'hypothèque' or registrable charge of a similar nature;"

This proposal was supported by few delegations.

61. The observer for the Institute of International Container Lessors (IICL) proposed that consideration should be given to including time charterers in paragraph 1 (d) (ii) and making arrest more widely available, bearing in mind that it was a lesser remedy than a lien and did not always lead to forced sale, as the vessel was released when security was provided.

62. The observer for the International Ship Suppliers Association (ISSA) expressed concern that ship suppliers' interests would be adversely affected by some of the changes to the Arrest Convention. Before the adoption of the 1993 MLM Convention, ship suppliers had a maritime lien in respect of their claim. The changes introduced into the 1993 MLM Convention, as well as the new Arrest Convention, would considerably weaken the position of ship suppliers.

63. The observer for the International Federation of Free Trade Unions supported the proposal of the United States of America and drew attention to the fact that bilateral agreements between States often prevented crew members from arresting a vessel for their claim.

64. The observer for the International Chamber of Shipping (ICS) preferred the text of alternative 1 but felt that, since this alternative could not be accepted, a compromise had to be found. She therefore suggested that, because of the relationship between the list of claims in Article 1 (1) and the

proposal of the United States of America, consideration should be given to placing the proposal of the United States of America, as amended by some delegations, in brackets, in the same way as in Article 1 (1).

65. In view of the above, the Sessional Group decided to take the proposal of the delegation of the United States of America as a basis and make the following amendments:

(i) To include in subparagraph (a) the words "claims against the owner, demise charterer, manager or operator of the vessel" from the chapeau of Article 4 of the MLM Convention;

(ii) To place subparagraph (b) in brackets, with the addition of similar words from the chapeau of Article 6 of the MLM Convention;

(iii) To use in subparagraph (c) the words "a mortgage or an 'hypothèque' or registrable charge of the same nature" from Article 1 (1); it should also be considered whether the term "registrable" was the correct term to use in this context;

(iv) To place subparagraph (d) (ii) and paragraph 2 (b) of the JIGE text in brackets;

(v) To introduce the concept of claims based on tort from Article 4 of the MLM Convention in paragraph 1 (a) (v) by including in parentheses the words "based on tort" after "physical loss or damage".

Article 4 - Release from arrest

Paragraph (1)

66. The Sessional Group considered the proposal of Japan (document JIGE(IX)/3) that the Group should revert to the text of the 1952 Convention in so far as it excluded mandatory release by provision of security in the case of arrest relating to disputes as to ownership or possession of a ship. This proviso should be added to the present paragraph 1. A second sentence would incorporate the second sentence of the first paragraph of Article 5 of the 1952 Convention, with the following two language corrections of a consequential kind: the expressions "or other appropriate judicial authority" and "bail or other" should be deleted.

67. The Group accepted this proposal.

Paragraph (2)

68. The Group considered the proposal made by the United Kingdom (document JIGE(IX)/3) to delete reference to the value of the ship.

69. This proposal was supported by several delegations on the grounds that the limitation amount applicable in determining the security would, very often, exceed the value of the ship.

70. Other delegations opposed this proposal. In their view the security provided to obtain release should necessarily be related to the value of the ship which would, in the end, be the only value which could be obtained in the case of forced sale. Some of these delegations pointed out that Article 8 (5) made it clear that the Arrest Convention would not affect the application of international conventions providing for limitation of liability.

71. The Group decided that the expressions "not exceeding the value of the ship" should be included within square brackets.

Paragraph (3)

72. No comments were made in respect of this paragraph.

Paragraph (4)

73. The Group noted the views of two delegations according to which the expressions "in respect of the same claim" should be incorporated in subparagraphs (a) and (b) after the first reference to the security given in a State party.

74. The Group considered whether the phrase "save in exceptional circumstances where it would be unjust to do so" should be deleted from subparagraph (a). Some delegations favoured this deletion, bearing in mind the imprecise meaning of the word "unjust" and the unlikelihood of application of this proviso.

75. Other delegations, while accepting that the wording was defective, were of the opinion that the proviso was needed in order to address any possible case where decisions taken within the jurisdiction of a non-party could affect the implementation by a State party of the basic provisions of the convention regarding the release of security.

76. The Group decided that the phrase should be kept within square brackets.

77. Bearing in mind the decision taken on paragraph 2 of Article 4, the Group decided to keep within square brackets the reference to the value of the ship in subparagraph 4 (b).

Paragraph (5)

78. No comments were made in respect of this paragraph.

Article 5 - Right of rearrest and multiple arrest

79. The Sessional Group considered the two alternative texts of the draft articles. The majority of delegations favoured the text of alternative 1, since it was considered to provide a clear and balanced basis for the question of rearrest and multiple arrest. These delegations felt that alternative 2 was too restrictive. Some doubts however, were expressed concerning subparagraph (c) of alternative 1. It was considered to be ambiguous, for example in its use of terms such as "taking reasonable steps", which could

give rise to varying interpretations. A few delegations preferred alternative 2 in order to restrict the right of rearrest so as to make seaborn trade more efficient.

80. In the view of one delegation, alternative 1 did not serve the object of the Convention. It was also pointed out that questions of sufficiency of security for the purpose of release of the ships was covered by the provisions of Article 4. This delegation questioned the point of time and the authority to decide on the sufficiency of security for the purpose of Article 5 (1) (a). In its view, Article 5 (1) (a) would only be relevant if the circumstances of the case had been changed. It was pointed out that such a situation could only arise at a later stage after a vessel had been released through the provision of security, the nature and amount of which had been determined by the Court. If the nature and the amount of the security were agreed by the parties involved, such an agreement should be respected and could not be cancelled unilaterally. One delegation proposed that consequential amendments should be made in Article 5 (1) (a) if suggestions to amend Article 4 (2) to include reference to "global limitation of liability of the ship" or "the size of the claim" were accepted.

81. The observer for the International Chamber of Shipping (ICS) recalled that comments submitted by its delegation during the eighth session of the Joint Group (contained in document JIGE(IX)/4) were still valid. Its delegation supported the text of alternative 2 so as to limit any right of rearrest to specific and clearly defined circumstances.

82. The observer for the International Maritime Committee (CMI) expressed doubts as to whether Article 5 (2) covered the situation where the arrested vessel was sold in a forced sale but the proceeds of sale were not sufficient to satisfy the claim.

83. The Sessional Group agreed to retain the text of alternative 1, keeping subparagraph (c) in brackets, and to delete alternative 2.

Article 6 - Protection of owners and demise charterers of arrested ships

Paragraph (1)

84. Some delegations supported the view expressed by the observer for the ICS that there should be an obligation on the part of the claimant to provide security for any loss incurred by the defendant for which the claimant might be found liable. Thus, it was suggested that paragraph 1 should contain a mandatory rule for the court to impose the obligation to provide security upon a claimant seeking arrest. The expression "may" should accordingly be replaced by "shall". The majority of delegations were unable to accept this proposal. In their view, courts should be given discretion to decide as to if, when and in what nature and amount security should be required from an arrestor. In this regard mention was made of the right of crew members to request the arrest of a ship to secure payment of wages: their right to obtain arrest should be recognized even if they were unable to provide security. In the view of the delegations supporting the replacement of "may" by "shall", these situations were, however, properly addressed in the remaining paragraphs of the article. These delegations were also of the view

that this matter had been correctly categorized by the Chairman as a matter of principle which required consideration by the diplomatic conference. To that effect, these delegations suggested that the word "may" be placed in brackets.

85. The Group considered a proposal made by the United Kingdom (document JIGE(IX)/3, paras. 25 and 26) to delete reference to "unjustified" arrest from paragraphs 1 (a) and 2 (a). It was suggested that, with the exception of wrongful arrest, a claimant should not be penalized for having arrested a ship, even if the action failed on its merits. This proposal was opposed by several delegations. In their view, the deletions suggested would result in narrowing the possibilities of defence of the defendant, who would be compelled to prove the existence of bad faith on the part of the claimant to obtain compensation for loss resulting from the arrest. In connection with the argument that reference to unjustified arrest might conflict with national law, it was noted that such conflicts could be avoided by the operation of paragraph 3 of this article, according to which the liability of the claimant would be determined by the application of the law of the State where the arrest was effected.

86. It was noted that, while in Article 7 (1) reference was made to the jurisdiction on the merits of the case in connection not only with effected arrests but also with security given to prevent arrest, reference to this last case had not been included in Article 6, paragraph (2). In this regard, it was suggested that reference in this paragraph to "security given to prevent arrest" and "obtain the release of the ship" could be included.

87. The Sessional Group agreed to retain the text of Article 6 as presently drafted, but leave the word "unjustified" in paragraphs 1 (a) and 2 (a) in brackets.

Paragraph (2)

88. The observer for the CMI said that paragrah (2) did not expressly provide which State should have jurisdiction if security was provided before an arrest.

Paragraphs (3), (4) and (5)

89. No specific comments were made in connection with these paragraphs.

Article 7 - Jurisdiction on the merits of the case

90. In reply to a question as to the reason for providing broader scope in draft Article 7 for jurisdiction on the merits of the case, the observer for the CMI explained that Article 7 (1) of the 1952 Convention was not in effect a compromise between civil law and common law systems as it purported to be. As a result, common law countries retained their system under which arrest for maritime claims provided a ground for acquiring jurisdiction, while in civil law countries jurisdiction was only afforded by the Convention in respect of certain claims with no specific reason. To achieve uniformity, it had been felt necessary by the drafters of the CMI text in 1985 to grant jurisdiction in all cases and not in respect of certain maritime claims. The observer for the CMI also proposed including a reference to "arbitral tribunal" in

Article 7 (5) after the words "Competent court", so that it read "... or if proceedings before a competent Court or arbitral Tribunal in another State are brought ...".

91. One delegation questioned which law would be applied to decide whether agreements to submit disputes to a Court of another State under Article 7 (1) were validly concluded. The view was expressed that this question was left to national law to decide. That view was commonly shared. Some other delegations proposed to delete the word "validly" in Article 7 (1), since it was not sufficiently clear and could give rise to dispute. One delegation pointed out that the translation of the terms "claim", "claimant" and "maritime claim" into Arabic should be reviewed.

92. The Sessional Group decided to retain Article 7 of the JIGE text, with the addition of "arbitral Tribunal" in paragraph (5).

Article 8 - Application

Paragraph (1)

93. The observer for the Latin American Association of Navigational Law and Law of the Sea (ALDENAVE) drew attention to the fact that this paragraph would make the provisions of the Convention applicable to every sea-going ship, irrespective of its flag. He suggested following the approach adopted in Article 13 (1) of the MLM Convention, adding at the end of the paragraph the following sentence: "provided the ship of a non-contracting State under arrest is subject to the jurisdiction of the State party at the time of the arrest".

94. One delegation supported this proposal, subject to drafting changes. Another delegation favoured the narrow approach provided by the 1952 Convention. While Article 8 of the new draft widened the scope of application of the Convention, Article 9 had the opposite effect. In the view of this delegation, if the 1952 approach was adopted there would be no need for further provision or reservation. This proposal, however, was only supported by one other delegation.

95. The observer for the CMI said that Article 8, paragraph 2, of the 1952 Convention extended the right of arrest in respect of maritime claims also to ships flying the flag of a non-contracting State but did not extend to these ships the benefit granted by Article 2. There was a problem due to the difference in wording of paragraphs 1 and 2 of Article 8. The new text as drafted in Lisbon was more precise and in line with the approach adopted by new conventions such as the 1993 MLM Convention.

96. Most delegations favoured the JIGE text and could not initially accept the introduction into Article 8 of the concept of Article 13 (1) of the MLM Convention, which provided that the vessel be subject to the jurisdiction of the State Party. This was considered unnecessary, since it was evident that the Court could not proceed with arrest unless it had jurisdiction. The majority of delegations, therefore, preferred to keep the present text of Article 8 (1).

97. Subsequently, one delegation proposed the following addition to Article 8 (1): "subject to the condition that the ship of a non-contracting State under arrest is within the jurisdiction of the contracting State at the time that the arrest is made". Another delegation proposed a second alternative more in line with the 1952 Convention: "This convention shall apply to any sea-going ship within the jurisdiction of any State Party."

98. Another delegation proposed a third alternative, consisting of the addition of the following phrase to Article 8 (1): "provided the ship is within the jurisdiction of the State Party".

99. Most delegations supported the second alternative as being simple and concise.

100. One delegation said that the Convention should apply to any sea-going ship within the jurisdiction of a State Party where an order has been made. This delegation requested that the proposal be included as a footnote in the draft text. Other delegations supported this proposal.

101. Several delegations suggested the convenience of adding to the second alternative the following wording: "whether or not that ship is flying the flag of a State Party". It was finally agreed that the text would read as follows:

> "This Convention shall apply to any sea-going ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party."

102. It was furthermore agreed to include a footnote reflecting the view of four delegations to the effect of adding: "where the order has been made" after "... jurisdiction of any State Party".

Paragraph (2)

103. The observer for ALDENAVE suggested that the paragraph should be aligned with Article 3 (1) of the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships, 1926, and that immunity should be granted to the ship at the time when the cause of action arises.

104. The Sessional Group agreed to retain the paragraph as presently drafted, subject to the consideration of any written proposal from ALDENAVE.

Paragraph (3)

105. In the view of one delegation, the paragraph should either be an independent article or form part of Article 3. The Group accepted the content of the paragraph and decided to postpone the decision as to the place of the paragraph.

Paragraph (4)

106. The observer for the International Association of Ports and Harbours (IAPH) said that his organization was currently carrying out a survey in orde to ascertain the undesirable effects of arrest of ships in ports. The replie received so far made it very clear that, although large ports enjoyed in general a good level of legal protection, that was not, unfortunately, the case with respect to ports in developing countries, where ships under arrest often disturbed the commercial life of ports and, by occupying in certain cases up to 20 per cent of their capacity, could seriously affect other port users. It was suggested that the provision of the new Convention should reflect the interests of ports, which should be considered as a third party directly affected by the arrest. One delegation sympathized with the IAPH remarks and said that it would submit a written proposal in relation to Article 2 (5).

107. One delegation expressed concern as to the many powers vested in harbour authorities, that were protected by a lien and often by domestic law that permitted the arrest of ships.

108. The observer for the CMI said the purpose of the provision was to provide freedom to maritime authorities wishing to detain or prevent ships from sailing within their jurisdiction for safety reasons.

109. Some delegations supported the retention of the paragraph as presently drafted.

110. The Sessional Group decided to maintain the present text but agreed to consider any written proposal in relation to Article 2 (5).

Paragraph (5)

111. The Sessional Group agreed to keep the present text of Article 8 (5).

Paragraph (6)

112. The Sessional Group agreed to keep the present text of Article 8 (6).

Paragraph (7)

113. The Sessional Group agreed to keep the present text of Article 8 (7).

Article 9 - Reservation

114. The Sessional Group agreed to keep the present text of Article (9).

Annex III

REPORT ON THE WORK OF THE SESSIONAL GROUP OF THE WHOLE

Paper of the Informal Working Group on Article 1

The Informal Working Group met from 2 to 4 December 1996. It was chaired by Mr. P. Calmon Filho (Brazil) and was attended by delegations from Brazil, Canada, China, Finland, France, Greece, Mexico, Netherlands, Sweden, Switzerland, United Kingdom and United States of America.

Article 1 - Definitions

Article 1 (1)

(1) "Maritime claim" means any claim concerning or arising out of the ownership, construction, possession, management, operation or trading of any ship, or *concerning or arising* out of a mortgage or an "hypothèque" or a registrable charge of the same nature on any ship, *or out of salvage operations relating to any ship*, such as any claim in respect of: 1/

(a) *physical* 2/ loss or damage caused by the operation of the ship *other than loss of or damage to cargo, containers and passengers' effects carried on the ship*;

(b) loss of life or personal injury occurring, whether on land or on water, in direct 3/ connection with the operation of the ship;

(c) salvage operations or any salvage agreement;

(d) liability to pay compensation or other remuneration in respect of the removal or attempted removal of a threat of damage, or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement;

(d) the removal or attempted removal of a threat of damage including damage to the environment or of preventive measures or similar operations, whether or not arising under any international convention, or any enactment or agreement, or losses incurred, or likely to be incurred, by third parties 4/.

(e) costs or expenses relating to the raising, removal, recovery or destruction of the wreck of the ship or its cargo; 5/

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers in the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried in the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) or services supplied to the ship for its operation or maintenance;

(m) construction building, repairing, converting or equipping of the ship;

(n) port, canal, and other waterway dues and charges and pilotage dues;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements made in respect of the ship, by or on behalf of the master, owner, demise or other charterer or agent;

(p) master's disbursements and disbursements made by shippers, demise charterers, other charterers or agents on behalf of the ship or its owners;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer; 6/

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer; 7/

(s) any dispute as to ownership or possession of the ship or arising out of a contract for the sale of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a registered mortgage or a registered "hypothèque" or a registrable charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

Notes:

(i) Amendments agreed in London (TD/B/CN.4/GE.2/10 pp. 15-16) as revised in Geneva.

(ii) Amendments agreed in Geneva

The Group further agrees that it would be necessary to reconsider in future work the wording where a restriction of a maritime lien would be inappropriate in respect of a maritime claim.

Notes

1/ Comments by the delegation of the Netherlands: "to add an additional subparagraph reading: (...) which a maritime lien is granted against the owner, demise charterer, manager or operator of the ship, by the law of the State in which the arrest is made".

Since it was the task of the Working Group to ensure that all claims with maritime liens status under the 1993 MLM Convention are included in the list of maritime claims of Article 1 (JIGE(VIII)/7, annex I, para. 18) this proposal was made to ensure that national maritime liens granted under Article 6 of the 1993 MLM Convention were also included in the list of Article 1.

2/ The Chinese and Greek delegations do not agree with the deletion of the word "physical".

3/ The Group is divided as to the retention or deletion of the word "direct".

4/ Comments by the Greek delegation on Article 1 (d): In negotiating the Maritime Liens and Mortgages Convention of 1993, a compromise was reached, which was reflected in Article 4 (2) of the above-mentioned Convention, where no maritime lien shall be attached to a vessel to secure claims which arise out of or result from the cases mentioned there.

The same compromise should be reflected in the new draft articles for new rules on the arrest of sea-going ships.

Therefore, a vessel should not be arrested for claims which arise out of: (a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; (b) the radioactive properties or a combination of radioactive properties of nuclear fuel or of radioactive products or waste.

5/ Comments of the Greek delegation on Article 1, paragraph 1 (e): "In discussing this definition, Greece would like to make clear to everybody that a ship in distress cannot be the subject of arrest due to the tremendous risks involved for the safety of passengers, crew and cargo of the vessel, for the vessel itself and for the environment."

6/ Comments by the Greek delegation on Article 1 (q): The Greek delegation has some doubts about the exact application of Article 1 (q) in several jurisdictions, where peculiarities might arise.

7/ Comments by the Chinese and Greek delegations on Article 1 (r): The two delegations are of the opinion that the provisions of Article 1 (r) are very vague and may lead to situations where a vessel can be arrested for a

very small amount of money.

Therefore, the two delegations believe that this subparagraph should be deleted, bearing also in mind that the commissions, brokerages or agency fees mentioned there result from contracts. Therefore, the claimant had a fair chance to check the credibility of the owner before he entered into the contract.

Annex IV

ATTENDANCE [1]

1. The following States members of UNCTAD were represented at the session:

Argentina
Australia
Benin
Brazil
Canada
China
Cuba
Czech Republic
Denmark
Dominican Republic
Ethiopia
Finland
France
Gambia
Germany
Greece
Honduras
Indonesia
Iran (Islamic Republic of)
Israel
Italy
Japan
Kuwait
Latvia
Libyan Arab Jamahiriya
Madagascar
Mali
Mexico
Morocco
Netherlands
Nigeria
Norway
Panama
Philippines
Romania
Russian Federation
Saudi Arabia
Slovakia
South Africa
Spain
Sudan
Sweden
Switzerland
Syrian Arab Republic
Thailand
Tunisia
United Kingdom of Great Britain and Northern Ireland
United States of America

2. The following associate member of IMO attended the session as an observer:

Hong Kong

3. The following intergovernmental organizations were represented at the session:

Arab Labour Organization
Organization of African Unity

4. The following non-governmental organizations were represented at the session:

General Category

International Bar Association
International Confederation of Free Trade Unions

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[1] For the list of participants, see TD/B/IGE.1/INF.1.

Special Category

Airlines' Worldwide Telecommunications and Information Services
Federation of National Associations of Ship Brokers and Agents
Ibero-American Institute of Maritime Law
Institute of International Container Lessors
International Association of Ports and Harbours
International Chamber of Shipping
International Maritime Committee
International Ship Suppliers Association
Latin American Association of Navigational Law and Law of the Sea.

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GE.97-50565 (E)

INTRODUCTION

1. The first session of the Commission on Investment, Technology and Related Financial Issues was held at the Palais des Nations, Geneva, on 18-22 November 1996 and 7 February 1997. In the course of the session, the Commission held seven plenary meetings (1st to 7th meetings) and a number of informal meetings.

2. Also in the course of the session, two panel discussions were organized, the first on "Attracting FDI for development: lessons for LDCs", and the second on "Experiences of developing countries with the implementation of competition law and policy".

3. In parallel to the Commission, the World Association of Investment Promotion Agencies (WAIPA) held its second annual meeting. WAIPA contributed to the Commission's work by providing the panellists for the Commission's first panel.

Opening statements

4. The **Secretary-General of UNCTAD** said that the Commission provided a forum in which all countries could discuss the investment issue, especially from a development angle, and had the facility to involve civil society at large. At the most recent session of the Trade and Development Board, a high-level segment (Global Investment Forum) had been devoted to the question of foreign direct investment in a globalizing economy, and a number of conclusions could be drawn from the discussions that had taken place. Firstly, all countries recognized FDI as an important issue, particularly in the development context; secondly, UNCTAD was regarded as a forum in which the whole range of issues relating to FDI could be discussed; and thirdly, UNCTAD had the capacity to prepare for such discussions substantively and organize them efficiently. The secretariat's research, analysis and organizational capacity would be at the disposal of the Commission for its future activities, and of course the secretariat remained entirely open to cooperation with other international organizations. Finally, the mandate of the Commission also included competition policy, technology and other financial flows, which opened up a number of possibilities for synergies.

5. The **Chairperson** said that, over the years, attitudes towards foreign investment had changed markedly, and FDI was now acclaimed as a powerful tool for development. Both developed and developing countries had liberalized their rules on foreign investment in order to attract more FDI, but there was still a diversity of national priorities and objectives as far as FDI was concerned, and the possibility of multilateralizing FDI rules should be examined. A related issue was competition policy, which could become a constraining factor as liberalization proceeded.

6. The **Director of the Division on Investment, Technology and Enterprise Development** pointed to the importance that UNCTAD attached to a better understanding of the role of FDI in the process of sustainable global

development. In this regard, she emphasized on the one hand the growing importance of transnational corporations in the world economy and the increasingly inextricable interlinkages between investment and trade that arose out of TNCs' global networks, and on the other the highly uneven distribution of FDI and the marginalization of the LDCs, especially in Africa, in this regard. Pushed by competitive pressures and pulled by the attractiveness of large markets, FDI mostly bypassed developing countries, rendering insufficient all of their efforts to improve the domestic FDI environment. Developing countries should focus on building attractiveness at home by such means as, for example, strengthening the local enterprise sector and the skill endowment of the workforce.

Chapter I

DEVELOPMENTS IN INTERNATIONAL INVESTMENT: INTERACTION BETWEEN INVESTMENT AND TRADE AND ITS IMPACT ON DEVELOPMENT

(Agenda item 3)

7. For its consideration of this item, the Commission had before it the following documentation:

"Overview of the World Investment Report 1996: Investment, Trade and International Policy Arrangements" (UNCTAD/DTCI/32(Overview));

World Investment Report 1996 (UNCTAD/DTCI/32) (background document);

"Experiences gained in technical cooperation with respect to 'best practices' in investment promotion: background document prepared by the UNCTAD secretariat" (TD/B/COM.2/Misc.1).

8. In his introductory remarks, the **Chief of the International Investment, Transnationals and Technology Branch of the Division on Investment, Technology and Enterprise Development** highlighted some salient points relating to the interrelationship between FDI and trade and the policy implications arising therefrom. While trade had grown rapidly, FDI had also grown rapidly since the early 1980s - in fact, more rapidly than trade and domestic production. Sales by foreign affiliates were now higher than exports. FDI was not only now more important than trade in linking markets internationally, it was also a mechanism to link the production systems of countries internationally. It involved the establishment of lasting relationships, increasingly within the framework of internationally integrated TNC systems that could serve as conduits of capital, technology, know-how and skills, as well as conduits of imports and exports. Estimates regarding the share of world trade undertaken by TNCs showed how closely FDI and trade were interrelated, underscoring the importance of questions related to that interrelationship and the answers to those questions in the context of a changing world economy.

9. The dynamics of the interrelationship between investment and trade had undergone a dramatic change in recent years. In the present globalizing world economy, manufacturing firms had more options than ever before in terms of choosing how to serve foreign markets and accessing resources. As a result, the issue was no longer whether trade led to FDI or FDI led to trade but how firms accessed resources and where they located their value-added activities; investment and trade flows were determined simultaneously by the locational decisions of TNCs.

10. This greater intertwining of FDI and trade called for coordinated policy approaches. The principal policy issues to be addressed included measures affecting the entry and operations of foreign investors; standards of treatment as applied to TNCs, notably issues of national treatment, MFN treatment, and fair and equitable treatment; broader concerns relating to measures dealing with the proper functioning of the market, including such issues as RBPs; and investment protection and the settlement of disputes.

11. The spokesman for the **Latin American and Caribbean Group** (Panama) recalled the increased importance of FDI and the developing countries' experiences in this regard and noted the need to achieve the greatest international consensus in order to safeguard both the interests of developing countries and investors. In this regard, the Commission should promote further understanding of these issues. Attempts to regulate FDI should take into account that the FDI issue was inextricably linked with trade issues and intellectual property rights, and UNCTAD should therefore promote the study of these important areas. He also called for increased cooperation among international organizations on matters related to FDI and pointed to the example of the recent Global Investment Forum in this regard.

12. The spokesman for the **Asian Group and China** (Pakistan), said that countries were increasingly aware of the relationship between FDI and trade. In most countries, there was an effort to attract FDI with the objective of enhancing exports, supplementing domestic savings, developing infrastructure and catalysing technical progress. He emphasized, however, that while FDI could play a role in attaining these objectives, no simplistic conclusion should be drawn to the effect that all FDI was good for development. In particular, the Asian experience illustrated that careful regulation of FDI flows was necessary. Indeed, FDI could negatively impact the development process, for example through TNC entry that inhibited the growth of domestic firms, through the repatriation of capital that aggravated balance-of-payments difficulties, or through social and environmental effects that impeded further economic development. Furthermore, anticipated technology spillovers might not materialize. At the same time, FDI remained narrowly distributed in a few developing countries: most countries that needed inflows of foreign capital and know-how did not have the capacity to attract FDI, and the international community was increasingly reluctant to assist their development efforts. In this context, the emphasis on liberalization should also raise questions of the development needs of host countries, especially as regards human resources and infrastructure, which were also required for attracting FDI. Measures should also be taken by home countries to encourage FDI outflows. In general, the impact of FDI on development would need further analytical study in order to provide a basis for policies to ensure that FDI contributed to development. In particular, the secretariat's work should focus on: (i) empirical studies on the effect of FDI on development as a whole; (ii) steps that could be taken by home countries to promote FDI; and (iii) studies on the impact of FDI liberalization measures on FDI flows and their consequent effects on trade and development.

13. The representative of **Ireland**, speaking on behalf of the **European Union**, pointed out that, although the last few years had seen an extraordinary increase in FDI flows to developing countries, there were still countries where FDI was excluded from certain sectors of the economy or where inflows were inhibited due to shortcomings in the political, economic and institutional environment and a legacy of distrust towards FDI. International assistance for efforts to attract FDI could only succeed when appropriate frameworks were in place in host countries. Recalling the analysis of FDI/trade interlinkages provided in the World Investment Report 1996, he emphasized that the interrelationships between trade and FDI had to be taken into account in national and international policy formulation. The European Union favoured early progress towards a multilateral FDI instrument to be negotiated in WTO. At the same time, it welcomed the cooperation

between WTO and UNCTAD on trade and FDI issues. As to UNCTAD's work, he called for action-oriented work aimed at assisting developing countries, especially LDCs, in their efforts to attract higher levels of FDI, including: (i) further analysis of trends and changes in FDI flows, with a particular focus on LDCs; (ii) study of experiences of LDCs that were beginning to attract higher FDI inflows; (iii) capacity-building in LDCs so as to improve their investment climate, including strengthening access to information and formulation of policies to attract and benefit from FDI; and (iv) facilitating exchange of experiences on investment promotion. This work could benefit from technical reports by experts on development aspects of existing regimes, as well as an analysis of policies needed to attract FDI. With regard to the work of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR), he called for work on accounting and reporting to be carried forward as part of the Commission's expert meetings.

14. The spokesman for the **African Group** (Morocco), said that African countries, in particular LDCs, had been left out of the growing globalization of the world economy. The impact of this was all the more severe because flows of official development assistance were at the same time stagnating or declining and indebtedness continued to be a heavy burden for many countries. However, as pointed out in several secretariat studies, FDI potential did exist in Africa. Efforts to realize this potential and to improve the situation would require the assistance of the international community, for example through home countries promoting outflows of FDI to Africa from the developed countries. UNCTAD could serve as a catalyst in this area, as it had shown in undertakings such as the Africa Connect conference. In addition, the global initiative for Africa of the Secretary-General of the United Nations would warrant UNCTAD being actively involved in the area of FDI for the region through a pilot project on FDI profiles for African countries. Other areas on which UNCTAD should focus included South-South cooperation and regional integration. With regard to a multilateral investment framework, UNCTAD should continue to help ensuring that all issues and developments related to such a framework were explored further and that the development dimension was at the centre of the work ahead, through the organization of studies, round tables and seminars, including at the regional level. Questions to be considered in this context included, for example, whether a multilateral agreement on investment was needed, what the advantages of such an agreement were as compared with existing arrangements, whether such an agreement was critical for increasing FDI flows to developing countries and especially to countries in Africa, whether such an agreement would involve special treatment for LDCs, and whether there would be special provisions to take care of specific priorities of developing countries.

15. The representative of the **Russian Federation** said that his country was creating an investment climate designed to stimulate FDI inflows and was also cooperating at the regional and international levels in this area. In this regard, UNCTAD's work on the publication of basic legal documents dealing with FDI was welcomed and should be continued. UNCTAD should also continue its analysis of FDI processes, especially as regards the impact of FDI on the transition economies. UNCTAD's experience in the area of FDI should also be used to discuss the proposals for a multilateral investment agreement, in cooperation with other international organizations such as WTO and OECD.

16. The representative of **Senegal** referred to his country's liberalization experiences and noted that, as documented by the UNCTAD secretariat, they had not yet led to significant increases in FDI inflows into the country. That revealed a lack of interest of investors in Africa in general. UNCTAD should work to assist in overcoming this problem and in correcting the negative investment image of Africa.

17. The representative of **Japan** said that the role of FDI in international economic transactions had increased dramatically, and there was now widespread acceptance of FDI as a key instrument in promoting economic growth. At the same time, the existence of more than 1,000 bilateral investment treaties had created a complicated international framework that contributed to distortions of FDI flows. This called for a new, multilateral approach to FDI that would provide the predictability, consistency, transparency and stability required to expand investment flows, including to developing countries, and WTO should initiate work in this regard. For its part, UNCTAD should pursue its policy research and analysis, taking advantage of its well demonstrated expertise in this area. Research should focus on the development dimension of investment, including issues related to increases in national income, transfer of production technology and skills, balance-of-payments considerations and indigenous industries.

18. The representative of **Zambia** said that many least developed countries still lay outside the scope of the activities of transnational corporations, and he endorsed the idea that the secretariat produce investment guides for least developed countries that were objective, contained all the information useful for prospective investors, and showed that investment opportunities did, indeed, exist in least developed countries. He also called for further research on the effects of investment liberalization on development.

19. The representative of **Cuba** provided an overview of the regulatory framework for investment in Cuba and recalled that country's liberalization efforts. He also described the locational advantages of Cuba for foreign investors, advantages which had induced firms from several countries to invest in Cuba.

20. The representative of **Mexico** described Mexico's liberalization efforts intended to attract FDI that could contribute to the volume and quality of employment, transfer of technology and increased exports. He noted that the growth of FDI in developing countries had fallen short of the growth of FDI in general and emphasized the importance of joint efforts by the international community to expand FDI flows to developing countries, in particular LDCs.

21. The representative of **China** underscored the importance of focusing on the interlinkages between trade and investment which were of interest to many countries. He outlined China's reforms aimed at creating an enabling environment for foreign direct investment and pointed to the positive contributions that foreign investment had made to the economic growth of China in recent years. China would continue to adjust and perfect its laws and regulations for FDI with a view to gradually providing the same treatment for local and foreign investors.

22. The representative of **Norway** commended UNCTAD's work in the investment area. With reference to future activities, he called for action-oriented work on the consensus areas spelt out in the Midrand final document, including the interlinkages between trade and investment, investment promotion in developing countries, and capacity-building in the least developed countries.

23. The representative of **Madagascar** called for the Commission to initiate the pilot seminar on the mobilization of the private sector to encourage FDI flows to least developed countries, in accordance with paragraph 89 (g) of the "Partnership for Growth and Development", and appealed to donor countries to provide financial assistance for this endeavour. He also called for the implementation of the secretariat's proposal for the preparation of investment guides for all LDCs. As to the issue of a multilateral investment agreement, he recalled the Midrand mandate (para. 89 (b) of the "Partnership for Growth and Development"), noted the rising complementarity and synergy between UNCTAD's work in this respect and that of WTO, and requested the secretariat to contribute in this area.

24. The representative of **Venezuela** highlighted her country's recent liberalization experience, especially in the area of petroleum exploitation and exploration. She also provided a brief overview of the legal framework for investment in the country.

25. The representative of **Bangladesh** recalled his country's liberalization experiences and noted that, despite the efforts made and the numerous incentives offered to investors, only limited FDI inflows had been attracted to the country. He also noted that, in a globalized world economy, the free flow of labour was as important as the free flow of capital, and this issue warranted further attention in UNCTAD's work. The secretariat should also provide guidance to LDCs on how to conduct themselves successfully in the FDI market and should work with LDCs in the preparation of investment guides.

26. The representative of **Sri Lanka** pointed out that FDI produced not only benefits but also numerous costs that could be detrimental to development, such as, for example, possible deterioration of the terms of trade and the balance of payments. To ensure that these costs were minimized, Governments had to regulate entry of and conditions related to FDI. His delegation called for continued international assistance in the area of FDI, and such assistance should not be postponed until an "appropriate framework" existed.

27. The representative of **India** said that the uneven distribution of FDI flows called for further work on the determinants of FDI. In addition, the interrelationship between FDI and development was not always positive and the effects of FDI on development, including the negative effects, needed to be studied further. Governments established national policy frameworks for FDI and trade that had to take into account their development priorities, and any international attempt to develop a framework would also have to take those priorities into account and ensure a proper balance between countries' objectives and the rights of investors, something that would be difficult to achieve at the present time. The trend towards globalization and liberalization of factor movements would gain further momentum in the future and would be as inexorable as the globalization and liberalization of trade in goods and services. A multilateral investment agreement was thus not necessary at this time.

28. Summarizing the discussions under item 3, the **Chief of the International Investment, Transnationals and Technology Branch of the Division on Investment, Technology and Enterprise Development** expressed the secretariat's appreciation to the Governments of the Netherlands and Norway for providing financial support to the secretariat's work on the World Investment Report 1996 and to the Governments of Norway and Switzerland for financial support towards the Global Investment Forum. He noted the comprehensive nature of the discussion, which had underlined, among other things, the importance of FDI for development, both in its own right and in combination with trade; the worrisome fact that many countries received very little FDI; the role of home countries in stimulating FDI; the fact that FDI could also have negative effects; the need for proactive government policies; the need to improve the understanding of the multifaceted impact of FDI, particularly in the context of the liberalization of FDI flows, and the increasing recognition that FDI issues needed to be seen in a broader context, which included trade, competition policy, technology and intellectual property rights. He took note of the various proposals made by delegations concerning the themes for future analytical work, many of which revolved around the relationship between liberalization, FDI flows and development, as well as issues of specific relevance to development considerations in international investment agreements, with a view towards consensus-building. In concluding, he noted that, as suggested by delegations, future work would benefit from the involvement of civil society and close cooperation with other international organizations.

Chapter II

ISSUES RELATED TO COMPETITION LAW OF PARTICULAR RELEVANCE TO DEVELOPMENT

(Agenda item 4)

29. For its consideration of this item, the Commission had before it the following documentation:

"Issues related to competition law of particular relevance to development: note by the UNCTAD secretariat" (TD/B/COM.2/1 and Add.1);

"Agreed recommendations of the Expert Meeting on Competition Law and Policy" (TD/B/COM.2/EM/L.2);

"Report of the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices" (TD/RBP/CONF.4/15) (background document).

30. The **Senior Programme Manager of the Division of International Trade in Goods and Services, and Commodities**, having referred to UNCTAD's mandates on competition law and policy and to the documentation on this issue made available to the Commission, discussed the implications of globalization and liberalization for competition policy and the need to strengthen international cooperation in this area. The secretariat had organized a panel discussion within the framework of the Commission's session involving presentations by Mrs. E. Gachuiri of Kenya on "The problems faced by competition authorities in relation to the business community (the Kenyan experience)", Ms. C. Curiel of Venezuela on "The competition advocacy role of the competition authority in creating a level playing field for market players", and Mr. M. Ben Fraj of Tunisia on "The experiences of Tunisia in implementing its competition law and policy". The tasks of the Commission under this agenda item were to undertake general deliberations on the issue, to take decisions on the agreed recommendations of the Expert Meeting, and to provide broad guidance for the work of future expert meetings in the field of competition law and policy.

31. The **Vice-Chairman of the Expert Meeting on Competition Law and Policy**, speaking on behalf of the Chairman of that Meeting, introduced the report and agreed recommendations of the Expert Meeting, which had been held in Geneva from 13 to 15 November 1996. During the consultations held in the course of the Meeting, presentations had been made on the challenges faced by competition authorities in implementing competition law and policy; the treatment of vertical price restraints, by a representative of the European Commission; the application of competition law to monopolies and enterprises with special rights, by a panel of experts from Venezuela, Tunisia, Slovenia and France; and the protection of confidential information, by an expert from the United States Justice Department. Rich debates on these issues had ensued, and special mention was made of the practical methods of work used by the experts in the informal consultations. He then presented the agreed recommendations of the Expert Meeting (TD/B/COM.2/EM/L.2), which contained several recommendations for the Commission.

32. The spokesman for the **African Group** (Morocco) said that his Group attached great importance to the issue of competition law and policy. African countries were engaged in deep reforms in this field and had been very interested in the intergovernmental consultations held during the Expert Group created within the framework of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. At the national level, efforts in this field were hampered by the international dimension of RBPs and by the lack of human resources and inadequate institutional structures available in Africa. For these reasons, technical assistance on competition and consumer protection was essential in supporting African countries' efforts to formulate competition law and policy, as recommended by the Third Review Conference and UNCTAD IX in paragraph 91 (iii) of the "Partnership for Growth and Development", which placed special emphasis on Africa.

33. His Group fully supported the agreed recommendations of the Expert Meeting on Competition Law and Policy and greatly appreciated the work of the Meeting in bringing about a convergence of views in this field. The working methods of the Expert Meeting should serve as a model for other UNCTAD expert meetings. Funding the cost of participation of experts from developing countries would ensure that a broad spectrum of views were heard in the deliberations of the Expert Meeting.

34. He expressed his Group's support for UNCTAD's work on RBPs and for the technical assistance activities which the secretariat provided to interested countries in the area of competition law and policy. Furthermore, his Group believed that UNCTAD provided the most appropriate forum for dealing with the issue of competition law and policies.

35. The spokesman for the **Latin American and Caribbean Group** (Panama) pointed out the importance of competition policy legislation in the establishment of a well-functioning market economy, as well as in enhancing the international competitiveness of national industries. It was important that competition legislation favoured the undisrupted flow of goods and services beyond national borders. He also stressed the importance of international assistance in developing national competition laws and regulations, and thanked the UNCTAD secretariat for the help it had provided with respect to the enactment of competition legislation and the setting-up of national competition authorities. His Group was very pleased with the quality of the work of the Expert Meeting held the previous week, while regretting the insufficient presence of experts from developing countries due to lack of funds. His Group gave its full support for the continuation of UNCTAD's work in the field of competition law and policy.

36. The spokesman for the **Asian Group and China** (Pakistan) said that it was not easy for developing countries in particular to ensure that a competitive environment prevailed and that benefits of liberalization were not eroded by the emergence of RBPs. To undertake this task, technical assistance for the establishment of sound laws and institutions was necessary, and he therefore fully endorsed the Expert Meeting's recommendation that the secretariat should continue its technical cooperation activities in accordance with the relevant resolutions. It was necessary to address anti-competitive tendencies emanating from both domestic and external markets. Liberalization and technological changes had greatly increased the role of transnational

corporations (TNCs). As discussed in TD/B/COM.2/2/Add.1, this might make it more difficult to detect RBPs and to enforce competition policy, and it reinforced the need to assist developing countries' national efforts and to strengthen international cooperation in this area. He welcomed the Expert Meeting's recommendation that the secretariat prepare for consultations during the next meeting on international aspects of competition and the problems of competition law enforcement, including international mergers and industrial concentration, and requested a background document placing this issue in the context of TNC operations impinging on competition policy issues and enumerating policy options for host countries. He emphasized that, since the representation of developing countries at the Expert Meeting had not been adequate, it was necessary to operationalize the related trust fund quickly to enhance the participation of experts from these countries.

37. The representative of the **United States of America** said that he shared the views expressed by other delegations on the usefulness of the work of the Expert Meeting on Competition Law and Policy. He noted that the agreed recommendations of the Expert Meeting were silent about the status of the Intergovernmental Group of Experts. It had been agreed by the General Assembly in 1980 that UNCTAD was an appropriate forum to discuss competition law and policy issues. He would not make any judgement about the relative value of UNCTAD as a forum vis-à-vis other possible multilateral forums for discussing such issues.

38. The representative of **Japan** said that the Set had played an extremely important role in drawing the attention of the international community to the issue of restrictive business practices and contributed to the transparency and convergence of national regulations. The disciplines in the Set, which dealt with business practices by enterprises, were non-binding, and this should not be changed at this stage. Since competition laws and policy represented an extremely multidimensional and complicated issue, more international organizations would be involved in its consideration in the years to come. His delegation recognized UNCTAD's important contribution to the promotion of the smooth implementation of the Set, helping to promote international harmonization of rules and improving transparency in respect of restrictive business practices in developing countries. After reporting on his country's technical assistance activities in support of developing countries' efforts to adopt and implement competition laws and policy, he proposed that UNCTAD should formulate model courses on competition policy corresponding to the stage of development of countries and their experience in the implementation of competition law and policy.

39. The representative of the **Russian Federation** said that great changes had occurred in the area of competition and entrepreneurship in the CIS countries. The Russian Federation had made many positive changes in transforming the highly monopolistic economy inherited from the Soviet Union. It had adopted an Antimonopoly Act and created an Antimonopoly Commission, and it was now working on further improvements. However, the Russian Federation lacked skilled manpower and research institutions in the field of competition, and CIS countries had not received much technical assistance from UNCTAD. The Russian Federation therefore appealed to the UNCTAD secretariat to respond favourably to the CIS countries' request for technical assistance submitted to the Secretary-General of UNCTAD in 1995. He hoped that international

organizations would cooperate in work towards multilateral rules on competition promoting market access. He also proposed that a Manual on Competition and Investment dealing with RBPs should be prepared.

40. The representative of **Consumer International** said her organization, in cooperation with the Civil Unity and Trust Society (CUTS) of India, had recently organized a seminar on "Investments: Consumers, Development and the Environment". It was the strongest economies which would gain most from greater trade liberalization, while some of the poorest countries would lose out in the short term. With regard to a multilateral agreement on investment (MAI), corporate rights and the freedom to invest must be balanced with responsibility towards employees, customers and local governments. Consumer International was concerned that the interests of business were being allowed to override those of consumers, workers and the environment in a rush to provide the greatest incentives possible to investors. It strongly supported UNCTAD's role in the area of competition law and policy and its provision of technical assistance. She urged member States to consider a discussion of international competition policy under the auspices of WTO in order to strengthen national sovereignty in relation to global corporations.

41. The representative of **Ethiopia** said that his country had initiated the process of drafting competition legislation and would therefore be requesting the UNCTAD secretariat to provide appropriate technical assistance.

42. The representative of **Mexico** described his country's projects aimed at developing internal and external competition in the period 1996 through 2000. With respect to efforts aimed at protecting competition at the level of external trade, he drew attention to Mexico's important anti-dumping procedures.

43. The representative of **China** expressed gratitude to the secretariat for its work in the field of competition law and policy and hoped that the study that had been requested would be completed by the secretariat at an early date and distributed to all member States. He also expressed the hope that the secretariat would be able in the future to extend technical assistance to all States, and especially least developed countries, taking into account their specific situation and in accordance with their needs.

44. China had started work on competition legislation in 1987, and by 1993 it had passed laws against unfair competition. It was now in the process of refining its competition legislation. Apart from the central Government, local governments had also adopted rules and regulations on competition. He recalled that four workshops on competition had been held in China under the auspices of UNCTAD, with the participation of experts from a number of individual countries.

45. The representative of **Bangladesh** said that the least developed countries (LDCs) needed special protection if they were to become meaningful players in the new global economy. The LDCs had already taken steps towards making their economies competitive through privatization and liberalization. They had even put in place free trade zones. However, in order to achieve their development objectives, they needed continuous assistance from UNCTAD, OECD, WTO and other development partners. Referring to the statement made by Consumer International, he stated that his country could count on a strong consumer movement.

Chapter III

REPORTS REQUIRING THE ATTENTION OF THE COMMISSION

(Agenda item 5)

A. Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its fourteenth session (TD/B/ITNC/7)

46. **The Chairman of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) at its fourteenth session** presented the Working Group's report. He explained ISAR's origin in the Economic and Social Council (ECOSOC) and its role in the harmonization of national accounting standards. He also noted that ISAR's work was in line with the outcome of Midrand in that while the Group was composed of government experts, it had the participation of civil society in the form of professional accounting associations and committees. It also combined technical discussions with practical activities for the benefit of developing countries. He summarized the work of the fourteenth session on accounting for commercial banks, government concessions and the environment, as well as the Group's efforts to improve accounting education and professional qualifications in developing countries, particularly Africa. With regard to banking, he noted that ISAR's discussions had been enriched by a special banking forum of high-level bank managers, bank directors, bank regulators and bank auditors.

47. The representatives of **Ethiopia** and **Zambia** asked questions on the status of the accounting profession in Africa, the problems of the profession and the solutions identified.

48. A **representative of the UNCTAD secretariat** replied that in some African countries there were few qualified accountants because there were no national degrees and no national professional associations. Training therefore needed to be improved and associations created or strengthened. One solution for improving the quality and quantity of accountants would be via a benchmark for professional qualifications.

49. The representative of the **Russian Federation** said that the results of ISAR's work had been positive, particularly for his country, and he hoped that ISAR would be able to continue in the future. He asked for clarification on whether the Commission could or could not approve the convening of the next session since ISAR had been established by ECOSOC.

50. The **Director of the Division on Investment, Technology and Enterprise Development** replied that ISAR had formerly reported to the Commission on Transnational Corporations and had been transferred to UNCTAD, and it was now the Commission on Investment, Technology and Related Financial Issues which received its report. Its status in UNCTAD had been recognized in paragraph 115 of the "Partnership for Growth and Development", and therefore the Commission could decide on its future sessions.

51. The spokesman for the **African Group** (Morocco) said that the richness of the information provided by ISAR's Chairman reflected the importance of the Group. He stressed first that ISAR should continue its work and second that it offered developing countries the possibility of being equitably represented and expressing their views on this complex question. Regarding the status of ISAR, he underlined that it had existed before Midrand and that paragraph 115 of the "Partnership for Growth and Development" was open to different interpretations. His Group wanted ISAR to continue its work and receive special treatment, because it had been created before Midrand and had received its mandate from ECOSOC.

52. The spokesman for the **Asian Group** (Pakistan) said that his Group agreed with the African Group. ISAR was doing useful work and should continue its work in accordance with its special status. In his opinion paragraph 115 of the "Partnership for Growth and Development" was being interpreted incorrectly by some delegations.

53. The representative of the **United States of America** stated that he disagreed entirely with Morocco and Pakistan regarding the output of the Group and its future. His country declined to accept the report of the Group or its recommendations. It considered that the Group had ceased to exist, and any further work in the field in question should be done within the framework of an expert meeting.

54. The representative of **India** supported the statements of the representatives of Morocco and Pakistan. In view of the importance of the Group's work, he asked if UNCTAD had developed a technical assistance programme to implement the findings of the Group.

55. The **Director of the Division on Investment, Technology and Enterprise Development** replied that there were projects and/or workshops in Azerbaijan, China, the Russian Federation and Uzbekistan, and a workshop was planned for Bangladesh.

56. The representative of **Ireland**, speaking on behalf of the **European Union**, referred to the very useful work undertaken by ISAR; under UNCTAD's new institutional structure, that work must be carried out by an expert meeting.

57. The spokesman for **Latin America and the Caribbean** (Panama) said that Morocco and Pakistan had clearly expressed the sentiments of developing countries on the work of ISAR. His Group attached special importance to continuing the Group, which was considered useful by all for developing countries, as well as for the global community. His Group therefore associated itself with the conclusions proposed by the Chairman of ISAR. It also insisted on special treatment for the work of the Group, which was the only group mentioned expressly in the "Partnership for Growth and Development".

58. The representative of **China** supported the statements of Morocco, Pakistan and Panama.

59. The representative of **Japan** said that his country agreed with the United States and the European Union on the status of the Group. Future work in this area must be done by an expert meeting, and it must be compared with other possible topics.

60. The representative of **Australia** agreed with the European Union that work by ISAR must be considered within the context of UNCTAD's post-Midrand structure. Regarding work on developing an international benchmark for professional qualifications, this was a complex task, and she wondered if work by UNCTAD would help meet the need identified. It was not clear how an international benchmark, if established, could be administered, particularly by UNCTAD. The problem was more the lack of infrastructure in education and training in developing countries to produce recognized qualifications. Technical assistance was needed at the country level.

61. The representative of **Canada** agreed that future work on accounting and reporting should be carried out through an expert meeting, in accordance with paragraph 114 of the "Partnership for Growth and Development".

B. Activities of the Programme on Investment, Technology and Enterprise Development: report by the UNCTAD secretariat (TD/B/COM.2/Misc.2)

62. The **Director of the Division on Investment, Technology and Enterprise Development** gave an oral report on the activities of the Division in the five main areas of its work: investment and transnational corporations; science and technology for development; advisory services for investment and technology; privatization, entrepreneurship and competitiveness; and international accounting and reporting. Based on the background documentation provided by the secretariat (TD/B/COM.2/Misc.2), she stressed that, despite continuously shrinking resources under the regular budget, the programmes comprising the new Division had produced some 40 publications, technical papers and reports, and undertaken numerous advisory missions, workshops and training activities. She expressed her gratitude to a number of Governments for their Trust Fund contributions and expressed her hope that traditional donors would renew their commitments and new donors would come forward.

Action by the Commission

63. The Commission took note of the report of the secretariat.

Chapter IV

ACTION BY THE COMMISSION AND PROCEEDINGS OF THE CLOSING PLENARY

Action by the Commission

64. At its 7th (closing) plenary meeting, on 7 February 1997, the Commission adopted its draft agreed conclusions on agenda items 3 and 4 (TD/B/COM.2/L.2). (For the text of the agreed conclusions, see annex I.)

Closing statements

65. The representative of **Bangladesh** said that his delegation had held informal consultations with a number of LDC delegations present in Geneva in connection with the Commission's conclusions. Most of those delegations felt that the inclusion of the term LDC at an appropriate place in the draft conclusions would have enhanced the text. It was the considered view of these delegations that the Midrand Declaration as a whole was suffused with the notion of a need for specific assistance for the LDCs in all of UNCTAD's work. Legally, therefore, there was no bar to including the term LDC in the final conclusions of the Commission in the proper context. Such inclusion would only have reinforced the international community's commitment to design programmes geared to the needs of all developing countries, including in particular the LDCs. The need for FDI was universal, and an in-depth study of this vital subject by UNCTAD could benefit LDCs as much as other economic entities.

66. In the interest of consensus, however, a few of the LDCs had requested him to convey their agreement to the conclusions. The LDCs expected the Chairperson, by way of a note appearing as an addendum to the conclusions, to draw the attention of the international community to the pressing needs of the LDCs. The note could be couched in the language which the Chairperson deemed fit in the context and which the Chairperson believed to properly reflect the concern of the LDC community.

67. The **Chairperson** drew attention to paragraph 3 of the agreed conclusions of the Commission and said that that paragraph would provide a focus for the future work of UNCTAD.

68. The spokesman for the **African Group** (Morocco) said that the agreed conclusions were more or less satisfactory to all. With regard to paragraph 8 (c) of the conclusions, it was his Group's understanding that the President of the Trade and Development Board would proceed with consultations on the question of the status of the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, as well as on the question of the relationship between the status of those intergovernmental groups and the expert meetings referred to in paragraph 114 of "A Partnership for Growth and Development". It was the clear understanding of the African Group that if, as a result of the consultations, it was considered that the Intergovernmental Group of Experts on Competition Law and Policy did not fall within the quota of 10 expert meetings established in the aforementioned paragraph 114, an expert meeting would be convened to consider the impact of FDI on the transfer of technology to developing countries. With regard to paragraph 9 (b) of the agreed conclusions, it was his Group's understanding

that the meeting to examine and review existing agreements on investment would be only the first phase in the implementation of the mandate set out in paragraph 89 (b) of the "Partnership for Growth and Development".

69. The representative of **Mexico** said that his delegation had joined in the consensus on the agreed conclusions in order to allow the Commission's work to progress. With regard to paragraph 9 (a) of the conclusions, it was his country's understanding that the reference to the Expert Meeting on Competition Law and Policy was a reference to the Intergovernmental Group of Experts that had existed before UNCTAD IX and not to one of the expert meetings which were referred to in "A Partnership for Growth and Development" and which lasted for only a few days each. He urged the President of the Trade and Development Board to begin as soon as possible the consultations to define the status of the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Group of Experts on International Standards of Accounting and Reporting. The latter was a very useful body, and it would be a mistake to lose its accumulated expertise. Moreover, the Group had been established by the Economic and Social Council, and the Commission was not competent to ignore the Council's decisions. The Group should therefore be maintained, even if that meant reducing the number of expert meetings decided upon at UNCTAD IX to satisfy those delegations that wished to maintain UNCTAD's work within certain limits.

70. The representative of the **Russian Federation** said that many delegations were interested in the continued existence of the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. With regard to future work, the Midrand Declaration stipulated that UNCTAD's policy research and analytical work must illuminate the changes in the global economy and facilitate policy formulation within member States as they strove for development. It was clear that the work of UNCTAD must be carried out with the interests of all groups of countries in mind.

71. The spokesperson for the **Latin American and Caribbean Group** (Jamaica) said that her Group strongly underscored the importance of the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR). The work of both groups was of significant practical benefit to developing countries. The relevance of the Intergovernmental Group of Experts on Competition Law and Policy was beyond question at the present time, and the technical cooperation mandate in that particular area had been reconfirmed by the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, as well as by the Expert Meeting on Competition Law and Policy. UNCTAD's work in the field of accounting must also be commended and encouraged. ISAR was the only intergovernmental forum where developing countries could participate in the ongoing process of standardizing accounting standards. It enabled developing countries to review proposed accounting standards, register their opinions on what constituted best practice and receive assistance in the implementation of those standards. The Intergovernmental Group had been established by the Economic and Social Council and reconfirmed by UNCTAD IX. Her Group looked forward to a satisfactory resolution of the matter within the framework of the consultations of the President of the Trade and Development Board.

72. The representative of the **Netherlands**, speaking on behalf of the **European Union**, said that the agreed conclusions represented an elegant solution to a problem that had threatened to hold up the ongoing work of the Commission.

73. The spokesman for **Group D** (Bulgaria) said that the work of the Commission represented a top priority for the countries with economies in transition.

74. The spokesman for the **Asian Group and China** (Thailand) said that the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting dealt with issues that remained significant for his Group and in connection with which further assistance was needed to enhance the region's capacity to participate more fully and effectively in the world economy, particularly in international trade and investment. His Group was deeply concerned that the non-inclusion of those issues in the agreed list of topics for expert meetings would eventually close the door on continued UNCTAD assistance in the areas in question. However, his Group was encouraged by the prospect that those concerns might still be addressed through representations to the President of the Trade and Development Board that the Chairperson of the Commission might decide to undertake in the future.

75. His Group wished to draw attention to the development needs of Asian LDCs. UNCTAD IX had institutionalized the LDCs as a priority work programme for UNCTAD, and that operating principle must be translated into a programme of practical assistance. Finally, the impact of foreign direct investment on the transfer of technology to developing and developed countries was a matter of concern. The effectiveness of technology transfer in the Asian region was often circumscribed by the capacity of beneficiary States to manage it at the county level. In addition, foreign investment involving technology transfer was often donor-driven.

76. The representative of the **United Republic of Tanzania** said his delegation felt strongly that paragraph 9 (b) of the agreed conclusions should have made reference to the LDCs. It was sometimes tempting, when reference was made to LDCs, to seek to add references to other groups of countries also, but the problems faced by LDCs were more unique and fundamental than those faced by other countries. However, the final text of the agreed conclusions was balanced and took account of LDCs' interests. With regard to future work, it was hoped that the Commission's work on investment would complement the work of WTO in that connection.

77. The representative of **Peru** said that not only would the reports of the meetings referred to in paragraph 9 of the agreed conclusions contribute to the work of the Commission but, at the same time and in the light of the recent WTO Singapore Declaration, they could also be useful for the work of WTO in the field of both competition and investment, as stated in the aforementioned Declaration.

78. The representative of **Chile** said that his delegation would have liked a more precise formulation in paragraph 8 (c) of the agreed conclusions. It was its understanding that the aim of the consultations of the President of the Trade and Development Board should be to resolve the issue of the status of

the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

79. The **Chairperson** said she was extremely pleased that agreement had been reached on the Commission's 1997 work programme at the expert level but regretted that no broad consensus had been reached on the status of the Intergovernmental Group of Experts on Competition Law and Policy and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting.

80. With regard to competition law and policy, as indicated in the letter of 13 November 1996 from the President of the Trade and Development Board to H.E. Mr. Oscar de Rojas, Ambassador of Venezuela in New York, it had been agreed to change the title of the Intergovernmental Group of Experts on Restrictive Business Practices to the Intergovernmental Group of Experts on Competition Law and Policy subject to the need for further consultations to consider the differing views of delegations on the relationship between meetings of that Intergovernmental Group of Experts and the expert meetings convened by the Commission in accordance with paragraph 114 of "A Partnership for Growth and Development".

81. With regard to international standards of accounting and reporting, there was divided opinion on the continued existence of the Intergovernmental Working Group of Experts, partly due to different interpretations of paragraph 115 of "A Partnership for Growth and Development". Apart from that difference of interpretation, some other delegations believed that work in that area could be carried out within the framework of expert meetings and the annual quota for such meetings, as defined in paragraph 114 of "A Partnership for Growth and Development".

82. She would therefore request the President of the Trade and Development Board to undertake consultations, as soon as possible, on the status of those two expert bodies and their relationship with other expert meetings to be convened by the Commission. Should the consultations lead to the possibility of convening another expert meeting, it was her understanding that an acceptable topic would be the impact of foreign direct investment on transfer of technology.

83. Concerning the expert meetings to be convened in 1997, two additional points needed to be borne in mind. Firstly, the work of the Commission's expert meetings would take into account the interests and needs of developing countries, in particular the LDCs, and economies in transition. Secondly, the expert meeting referred to in paragraph 9 (b) of the Commission's agreed conclusions was just the beginning of the work mandated in paragraph 89 (b) of "A Partnership for Growth and Development".

84. Finally, concerning the format of the Commission's session, the insightful discussions that had taken place had reaffirmed the role of UNCTAD as a forum for active and fruitful debate. The session had attracted a number of experts from capitals, as well as actors from civil society. The panel format had worked well, although in future delegations should be informed of the arrangements for such panels well in advance so as to attract the participation of even more experts. It was hoped that the Commission's cooperation with WAIPA would continue, though such cooperation should not result in any additional financial burden for the United Nations.

Chapter V

ORGANIZATIONAL MATTERS

A. Opening of the session

85. The first session of the Commission on Investment, Technology and Related Financial Issues was opened on 18 November 1996 by Mr. Rubens Ricupero, Secretary-General of UNCTAD.

B. Election of officers

(Agenda item 1)

86. At its 1st plenary meeting, on 18 November 1996, the Commission elected its Bureau as follows:

Chairperson:	Mrs. Lilia R. Bautista	(Philippines)
Vice-Chairmen:	Mr. Youri Afanassiev	(Russian Federation)
	Mr. U.S. Bhatia	(India)
	Mr. Fabien Edafe	(Madagascar)
	Mr. Javier Paulinich	(Peru)
	Mrs. J. Wright	(United Kingdom of Great Britain and Northern Ireland)
Rapporteur:	Mr. Atsuyuki Oike	(Japan)

C. Adoption of the agenda and organization of work

(Agenda item 2)

87. At the same meeting, the Commission adopted the provisional agenda circulated in document TD/B/COM.2/1. Accordingly, the agenda for the first session was as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Developments in international investment: interaction between investment and trade and its impact on development
4. Issues related to competition law of particular relevance to development
5. Reports requiring the attention of the Commission
6. Provisional agenda for the second session of the Commission and any necessary preparation through expert meetings
7. Other business
8. Adoption of the report of the Commission.

D. Provisional agenda for the second session of the Commission and any necessary preparation through expert meetings

(Agenda item 6)

88. At its 7th (closing) plenary meeting, on 7 February 1997, the Commission adopted the draft provisional agenda for its second session (TD/B/COM.2/L.3). (For the provisional agenda, see annex III.)

E. Adoption of the report of the Commission

(Agenda item 8)

89. At the same meeting, the Commission adopted the draft report on its first session (TD/B/COM.2/L.1 and Add.1 and 2), as amended and subject to further amendments by member States to the summaries of their statements, and authorized the Rapporteur to complete the text of the report in the light of the proceedings of the closing plenary.

Annex I

DEVELOPMENTS IN INTERNATIONAL INVESTMENT: INTERACTION BETWEEN INVESTMENT AND TRADE AND ITS IMPACT ON DEVELOPMENT

ISSUES RELATED TO COMPETITION LAW OF PARTICULAR RELEVANCE TO DEVELOPMENT

Agreed conclusions

Focus of future work

1. The Commission encourages UNCTAD to continue to promote dialogue among development partners, including at the regional level.

2. The Commission recommends continued efforts by the secretariat to improve its collection of investment and related data, in cooperation with relevant international organizations and national Governments, as well as the harmonization, standardization and dissemination of such data.

3. The Commission recognizes the need expressed by many developing countries, in particular LDCs, for empirical studies to shed further light on the impact on development of liberalizing domestic investment regimes.

4. Noting that several countries have agreed to undertake investment policy reviews, as well as science, technology and innovation policy reviews, the Commission looks forward to receiving these reviews in order to familiarize other Governments and the international private sector with their results.

5. The Commission appreciates the utility and analytical quality of the World Investment Report.

6. The Commission invites contributions to support UNCTAD's programme with extrabudgetary resources, especially for technical assistance and for projects involving LDCs and countries in Africa, and expresses its appreciation to those countries that have already done so.

7. The Commission welcomes the work of the World Association of Investment Promotion Agencies (WAIPA) and calls for continued collaboration with WAIPA in promoting the exchange of experiences on investment promotion practices.

8. The Commission:

(a) Endorses the recommendations of the Expert Meeting on Competition Law and Policy;

(b) Takes note of the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) and takes no decision on the recommendations therein; and

(c) Takes note of the Chairperson's stated intention to request the President of the Trade and Development Board to undertake consultations to resolve the deadlock over the issue of expert-level activity.

9. The Commission agrees to convene:

(a) A meeting on competition law and policy, as called for in the report of the Expert Meeting on Competition Law and Policy;

(b) A meeting to examine and review existing agreements on investment, taking into account the interests of developing countries, and bearing in mind the work undertaken by other organizations, in pursuance of the mandate of paragraph 89 (b) of "A Partnership for Growth and Development" to identify and analyse implications for development of issues relevant to a possible multilateral framework on investment;

(c) A meeting on investment promotion and suggested measures in this respect that further development objectives.

Annex II

LIST OF PANELLISTS FOR PANEL DISCUSSIONS

A. Panel on "Attracting FDI for development: lessons for LDCs"
(agenda item 3)

Mr. Páid McMenamin
Managing Director, International Development Ireland Limited (IDI),
Chairman of World Association of Investment Promotion Agencies

Mr. Arvind Mayaram
Managing Director, Bureau of Industrial Promotion (BIP), Rajasthan, India

Mr. Rick Schulberg
Director, Organizing Committee for the Asia-Pacific Economic Cooperation (APEC)
Sustainable Development, Training and Information Network

Mr. Ahmed Shahrior Chowdhury
Member, Executive Council, Board of Investment, Bangladesh

Mr. Freddie Ruhindi
Corporation Secretary, Uganda Investment Authority

Mr. Chris Tillet
Associate Director, Coopers & Lybrand, Great Britain

B. Panel on "Experiences of developing countries with the implementation of competition law and policy"

Ms. Elizabeth Gachuiri
Senior Economist with the Monopolies and Prices Commission at the Ministry of Finance, Kenya

Ms. Claudia Curiel
Director of Research at the Superintendency for the Promotion and Protection of Free Competition (Pro-Competencial) of Venezuela

Mr. Mohamed Ben Fraj
Director of General Directorate of Competition at the Ministry of Commerce of Tunisia

Annex III

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION

1. Election of officers

2. Adoption of the agenda and organization of work

3. Recent developments in foreign direct investment trends and policies

4. Examining and reviewing existing agreements on investment to identify their implications for development, as called for in paragraph 89 (b) of "A Partnership for Growth and Development"

5. Reports of the subsidiary bodies of the Commission

6. Provisional agenda for the third session of the Commission

7. Other business

8. Adoption of the report.

Annex IV

ATTENDANCE 1/

1. The following States members of UNCTAD were represented at the session:

Albania
Algeria
Argentina
Australia
Austria
Bahrain
Bangladesh
Belarus
Bhutan
Bolivia
Brazil
Bulgaria
Burundi
Cameroon
Canada
Chile
China
Colombia
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Czech Republic
Democratic People's Republic of Korea
Dominican Republic
Egypt
Ethiopia
Finland
France
Gambia
Germany
Ghana
Greece
Honduras
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Libyan Arab Jamahiriya
Lithuania
Madagascar
Malaysia
Malta
Mexico
Morocco
Myanmar
Netherlands
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Senegal
Slovakia
Slovenia
Spain
Sri Lanka
Sweden
Switzerland
Syrian Arab Republic
Thailand
The Former Yugoslav Republic of Macedonia
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela
Viet Nam
Zambia

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[1]For the list of participants, see TD/B/COM.2/INF.1.

2. The following States members of UNCTAD were represented as observers at the session:

Angola
Ecuador
El Salvador
Georgia
Kyrgyzstan
Mauritius
Nepal
Nicaragua
Yemen

3. The Economic and Social Commission for Western Asia was represented at the session. The International Trade Centre UNCTAD/WTO was also represented.

4. The following specialized agencies and related organizations were represented at the session:

United Nations Educational, Scientific and Cultural Organization
International Monetary Fund
International Telecommunication Union
United Nations Industrial Development Organization
World Trade Organization

5. The following intergovernmental organizations were represented at the session:

Caribbean Community
European Community
Arab Labour Organization
Organization of African Unity

6. The following non-governmental organizations were represented at the session:

General Category

International Confederation of Free Trade Unions
International Council of Environmental Law
World Federation of United Nations Associations

Special Category

Consumers International